

OFFICE OF SPECIAL MASTERS

Filed: April 29, 2005

The Estate of CAMRYN J. McKENNA, *
by DENISE M. McKENNA and STEVEN *
McKENNA, Administrators, *

Petitioners, *

No. 03-2525V

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Denise M. McKenna and Steven McKenna, Stow, Massachusetts, pro se.

David L. Terzian, United States Department of Justice, Washington, D.C., for Respondent.

DECISION¹

SWEENEY, Special Master

On October 31, 2003, Denise M. McKenna, as administratrix of the estate of Camryn J. McKenna ("Camryn"),² filed a petition for compensation under the National Childhood Vaccine Injury Act. 42 U.S.C. § 300aa-1 to -34. The timely-filed petition alleges that as a result of the pneumococcal conjugate³ vaccination Camryn received on February 12, 2001, Camryn suffered a significant aggravation of her pre-existing encephalopathy. The petition further alleges that Camryn's condition continued to worsen and that the significant aggravation of her pre-existing encephalopathy led to Camryn's unfortunate death on November 1, 2001. Because respondent

¹ The court encourages the parties to review Vaccine Rule 18, which affords each party 14 days to object to disclosure of (1) trade secret or commercial or financial information that is privileged or confidential or (2) medical information that would constitute "a clearly unwarranted invasion of privacy."

² On April 14, 2005, the caption was amended to reflect that both Denise M. McKenna and Steven McKenna were administrators of Camryn's estate.

³ The pneumococcal conjugate vaccine protects against infection by the Streptococcus pneumoniae bacteria. Dorland's Illustrated Medical Dictionary 1505, 1999 (30th ed. 2003).

concedes liability in this case, petitioners are entitled to an award of \$250,000 pursuant to 42 U.S.C. § 300aa-15(a)(2).

Background

Camryn was born on November 1, 1997.⁴ Pet. at 1. Camryn's birth was traumatic and resulted in frequent hospitalizations for birth-related complications, including hypoxic ischemic encephalopathy⁵ and frequent seizures. *Id.* at 2; Pet. Ex. 1 at 22. Camryn's seizures lasted until May 1998 and she was completely weaned off of her seizure medication in December 1999. Pet. at 2.

On February 12, 2001, Camryn received a pneumococcal conjugate vaccination at Boston Medical Center. *Id.*; Pet. Ex. 3 at 1. About twelve hours after this vaccination, Camryn experienced a protracted episode of status epilepticus.⁶ Pet. at 2. Camryn's condition continued to worsen, and the need for medical intervention steadily increased. *Id.* Camryn died on November 1, 2001; the immediate cause of death was pneumonia. *Id.*; Pet. Ex. 6 at 1.

Petitioners represent that no one has collected an award or settlement on Camryn's behalf from a prior civil action for damages as a result of Camryn's vaccine-related injury and death. Pet. at 1.

Discussion

Respondent's counsel filed Respondent's Report, pursuant to Vaccine Rule 4(b), on March 14, 2005. The report indicates respondent's view that there is a preponderance of evidence that Camryn's February 12, 2001 pneumococcal conjugate vaccination caused a "significant aggravation of her preexisting chronic encephalopathy that, in turn, resulted in her pneumonia and death on November 1, 2001."⁷ Resp't Rep. at 2. Further, respondent states that "[t]here is not a preponderance of evidence that the significant aggravation of Camryn's preexisting chronic encephalopathy and ultimate death [were] due to factors unrelated to her immunization." *Id.* Respondent concluded that petitioners were entitled to the statutory award, and requested that petitioners file evidence with the court that they were the duly appointed legal

⁴ All references to the Petition shall be designated herein as "Pet. at ___." All references to the pertinent Petitioner's Exhibit shall be designated herein as "Pet. Ex. ___ at ___."

⁵ Encephalopathy is a term used to describe "any degenerative disease of the brain." *Dorland's Illustrated Medical Dictionary*, *supra* note 3, at 610. Hypoxic ischemic encephalopathy is encephalopathy resulting from a lack of respired oxygen. *Id.* at 165, 611.

⁶ Status epilepticus is "a continuous series of generalized tonic-clonic seizures without return to consciousness." *Dorland's Illustrated Medical Dictionary*, *supra* note 3, at 1756.

⁷ All references to Respondent's Report shall be designated herein as "Resp't Rep. at ___."

representatives of their daughter's estate. *Id.* at 2-3. Petitioners filed a certified copy of the decree appointing them as administrators of Camryn's estate on March 31, 2005. In addition, petitioners filed documentation of their out-of-pocket expenditures on April 25, 2005, requesting reimbursement in the amount of \$411.78. Respondent's counsel orally informed the court that he did not object to the reimbursement of petitioners' costs.

CONCLUSION

There is a preponderance of evidence that Camryn McKenna received a pneumococcal conjugate vaccination on February 12, 2001, which significantly aggravated her pre-existing encephalopathy and led to her subsequent death from pneumonia. Accordingly, petitioners are entitled to an award of **\$250,000** pursuant to 42 U.S.C. § 300aa-15(a)(2).

In addition, the court finds that an award of **\$411.78** in costs incurred by petitioners is appropriate.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court is directed to enter judgment accordingly.⁸

IT IS SO ORDERED.

Margaret M. Sweeney
Special Master

⁸ Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a Court of Federal Claims judge.